



Appeal Decision

Site visit made on 26 June 2021

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 02 July 2021

Appeal Ref: APP/M4510/C/21/3269803

**3-5 Eskdale Terrace, Brandling, Newcastle upon Tyne, Tyne and Wear
NE2 4DJ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Rajeev Saggarr against an enforcement notice issued by Newcastle-upon-Tyne City Council.
 - The enforcement notice is dated 29 January 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation of 2 dormers to the east elevation and 2 dormers to the west elevation of the property.
 - The requirements of the notice are: (i) Remove the 2 dormers to the east elevation in their entirety and reinstate the roof to its original form using roof slates that match existing roof. (ii) Remove the 2 dormers to the west elevation in their entirety and reinstate the roof to its original form using roof slates that match the existing roof.
 - The period for compliance with the requirements is eight months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (a) and the deemed planning application

Main Issue

2. The main issue is whether the development preserves or enhances the character or appearance of the Brandling Village Conservation Area.

Reasons

3. The appeal site at 3-5 Eskdale Terrace is located within the Brandling Village Conservation Area (CA), which, according to the extract from the 'Conservation Area Profiles' document, contains some of the best examples of Victorian domestic architecture in the city of Newcastle. The residential terraces are set largely in a mature landscape with views over Exhibition Park and the Town Moor. The terraces range from polite Georgian buildings to later workers' cottages and Arts and Crafts style housing.
4. Nos 3-5 comprise a pair of town houses of three storeys in height with accommodation in the roof space. The frontage is characterised by double height bay windows on the ground and first floors. The main doorways are

located in the centre between the ground floor bay windows, with single windows above. On the second floor, six smaller windows are arranged in three pairs.

5. In terms of materials, the frontages are built of brick, with decorative stone surrounds to the window openings. The doorcases comprise elegant stone columns with moulded brackets and cornicing above. The corner of the building is edged in stone quoins and the overhanging eaves are supported by timber dentils.
6. The rear elevations of the pair are plainer in appearance, incorporating a lower outshot with a pitched roof, and later lean-to extensions at ground floor level. They include features such as the historic window openings and similar brick construction to the side and front of the pair. The contrast between the public fronts of the buildings and the more private back elevations are important factors illustrating the architectural hierarchy and historic function of these dwellings.
7. The design of the terrace is simple and restrained with an architectural integrity and uniformity. Nos 3-5 are an attractive example of paired townhouses of their period. Although altered, their original form and dimensions, including the rear elevations, remain apparent. These factors contribute convincingly to the significance of the CA.

The effect of the development

8. Planning permission ref: 2018/0840/01/DET was granted in 2018 for development that included the construction of two dormer windows to the front roof slope and two to the back. At the front, the permitted dormers were proposed to sit symmetrically over the existing second floor windows. Two rooflights were proposed to sit above the two central second floor windows. In terms of their design, the permitted dormers were of a traditional appearance, with paired sash windows under a pitched roof with timber eaves and a finial detail.
9. As built, the new front dormers differ from the approved plans in a number of ways. They are set in towards the middle of the roof, and so do not sit centred over the windows below. In terms of design, they still comprise two paired windows each, but these are wide and flat, resulting in a strong horizontal emphasis. Instead of pitched roofs, the constructed roofs are hipped. They are shallower in height than those permitted, and do not incorporate the decorative features of the eaves and finials. The window frames are uPVC, whereas timber was permitted, and the dormer cheeks are finished in vertical slate.
10. At the rear, the constructed dormers and rooflights are similar in their design and distribution, with the exception that the small third rooflight is located between the dormers, roughly in line with the other two rooflights.
11. Policy DM15 of the Newcastle upon Tyne Development and Allocations Plan 2015-2030 (DAP) relates to the conservation of heritage assets, and amongst other things, requires alterations to be appropriate in scale, materials and architectural detailing. A key element of the architectural style of the two buildings is the vertical emphasis of the frontages. This is expressed in the tall,

- narrow windows, and the drawing of the eye upwards as the features get progressively smaller towards the roof.
12. Rather than follow through with this visual progression, the new dormers disrupt it in two key ways. Firstly, the wider, more squat appearance of the built dormers jars with the strong vertical emphasis of the openings below. Secondly, by being offset and not placed symmetrically in relation to the elevations, the dormers have an incongruous appearance because they fail to follow through the orderly arrangement whereby the openings below sit neatly in line.
 13. At the rear, the new dormers have a very similar appearance to those at the front. As noted, these elevations are more plain, but they still have a vertical emphasis, and retain much historic character. As at the front, the dormers appear out of character with the tall, narrow windows below. Although somewhat less obtrusive in the street scene than those at the front, they are still at odds with the traditional appearance of the appeal site.
 14. Drawing these factors together, I conclude that the development harms the appearance of the appeal site, and so in turn, harms the character and appearance of the wider CA. Accordingly, therefore, the development conflicts with the overarching statutory duty as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance and weight, and with the National Planning Policy Framework (NPPF). In addition, the appeal scheme conflicts with DAP Policy DM15, DAP Policy DM20, which seeks high quality design, and DAP Policy DM23, which amongst other things, seeks to protect the distinctive character of existing buildings. Further conflict arises with Policy CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne, insofar as it requires development to safeguard the historic environment.
 15. Although serious, the harm to the heritage asset in this case would be less than substantial, within the meaning of the term in paragraph 195 of the NPPF. Paragraph 196 requires that, where there is less than substantial harm, the harm should be weighed against the public benefits of the works.
 16. It is apparent that the unauthorised dormers provide additional living space within the dwelling. Nonetheless, this is a private benefit, and so does not count in favour of the appeal scheme.
 17. I therefore find that insufficient public benefits have been identified that would justify or outweigh the harm I have identified to the heritage asset. The scheme therefore conflicts with the NPPF, which directs, at paragraph 193, that great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
 18. The appellant makes reference to the truss arrangement which he says makes it impossible to place dormer windows centrally on the roof. There is no dispute between the main parties as to the existing of this truss arrangement. However, this situation does not justify the inherently unsympathetic design of the built dormer windows.
 19. I have taken into account the fact that there is a deciduous tree in front of the house that is in leaf for part of the year. The appellant contends that it is

almost impossible to see the dormer windows during these times. However, on my site visit in early summer, I saw that in fact the dormers are clearly visible from the street, and that the tree cover does very little to hide them. In any event, the presence of tree cover does not mitigate poor design, not least as they could be removed, and any replacement trees would take some considerable time to reach the same size.

20. I have had regard to the modern building adjacent to the appeal site. However, this appears to be a well designed contemporary structure which has a strong level of visual consistency throughout in terms of its architectural treatment. Its presence therefore does not justify the harm arising from the unauthorised development. I also saw a number of poorly designed dormer extensions in the general vicinity of the site. However, I am not aware of their planning history, and in any event, they serve to demonstrate the damaging effects of poor design on the CA. This factor has therefore not led me to a different conclusion.

Conclusion

21. The appeal on ground (a) fails and the deemed planning application is refused.

The appeal on ground (f)

22. The appeal on ground (f) is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
23. The appellant has drawn up and submitted an alternative scheme that would alter the front and rear dormers in accordance with the 'Proposed Alternative Dormers' with plan reference 1518_105. They would be within the apertures of the existing dormers due to the arrangement of the trusses, but would be closer in design to the permitted dormers.
24. However, this alternative to what is required in the notice would not remedy the breach of planning control as it would not cause the development to comply with planning permission which has been granted, or restore the land to its condition before the breach took place. I note also that the scheme would include uPVC windows, additional roof lights, and a flue at the front. With these changes, the proposal amounts to a scheme that is materially different and cannot reasonably be regarded as part of the scheme that constitutes the breach of planning control. Moreover, it would not achieve the aim of the notice to return the site to its condition prior to the breach.
25. It is open to the appellant to submit a planning application for the revised scheme, but for the reasons I have given, I can give it minimal weight in relation to the appeal before me.
26. The appeal on ground (f) therefore fails.

The appeal on ground (g)

27. The appeal on ground (g) is that the time given to comply with the notice, in this case eight months, is too short.
28. I have had regard to the information concerning the established tenancies for the property showing that the tenancy agreements will be in place for residents until the end of June 2022. The appellant considers that eight months is wholly

unsuitable and that it would not be possible to comply with the requirements in this timescale. He wishes to wait until the end of June 2022 to start the works, with a further four months until the end of October 2022 for their completion.

29. Whilst I take into account the difficulties posed by the tenancies, it would not be tenable to allow well over a year for compliance. This would be tantamount to granting a temporary permission for the development. To allow the harm to the CA to persist for such a long period would not be justified, would call into question whether it was expedient for the Council to enforce in the first place, and would erode the confidence of the public in the efficacy of the planning system.
30. It is for the appellant to reach an arrangement with the tenants over the carrying out of the work, and I am mindful that the Council has powers to extend the time period if it is justified. It seems to me that eight months is sufficient for the physical works to be done, and I find this time scale to be reasonable.
31. The appeal on ground (g) therefore fails.

Conclusion

32. For the reasons above, the appeal is dismissed, deemed planning permission is refused, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR